Filed 12/2/16 Deaguero v. Mountain Lion Acquisitions CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

ALFRED DEAGUERO, Cross-complainant and Appellant, v. MOUNTAIN LION ACQUISITIONS, INC., Cross-defendant and Respondent.	C077123 (Super. Ct. No. 39-2012-00288723-CU-MC-STK)

Cross-complainant Alfred Deaguero claims his consumer debt is void and uncollectable because the original lender sold his note to respondent and cross-defendant Mountain Lion Acquisitions, Inc. (Mountain Lion) in violation of the California Finance Lenders Law (Fin. Code, § 22000 et seq.).[1] Section 22340, subdivision (a) provides: "A licensee may sell promissory notes evidencing the obligation to repay loans made by the

[1] Further statutory references to sections of an undesignated code are to the Financial Code.

licensee pursuant to this division or evidencing the obligation to repay loans purchased from and made by another licensee pursuant to this division to institutional investors, and may make agreements with institutional investors for the collection of payments or the performance of services with respect to those notes." Subdivision (b) of that section defines the term, " 'institutional investor.' " Mountain Lion does not fit within any of the definitions in subdivision (b).

Deaguero claims that section 22340, subdivision (a) forbids the sale of a consumer debt to a noninstitutional investor, and that Mountain Lion, a noninstitutional investor, violated the California Finance Lenders Law when it purchased his debt. He claims that because the debt was void pursuant to section 22340, subdivision (a), Mountain Lion's efforts to collect the void and uncollectable debt entitled him to damages for breach of the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. § 1692 et seq.) and the Rosenthal Fair Debt Collection Practices Act (RFDCPA) (Civ. Code, §§ 1788-1788.33).

The trial court found that section 22340, subdivision (a) prohibited the purchase of Deaguero's debt by Mountain Lion. The trial court nevertheless granted judgment in favor of Mountain Lion following a court trial. The trial court found that Mountain Lion had already dismissed its case for payment of the loan, and that Deaguero could not recover the damages he was seeking because he did not show that Mountain Lion knew it was attempting to collect an unenforceable or void debt.

We will affirm the judgment, though not the reasoning of the trial court. If a decision of a lower court is correct on any theory of law, we will affirm the decision, regardless of the correctness of the trial court's reasoning. (*Estate of Beard* (1999) 71 Cal.App.4th 753, 776.) We shall conclude that the statutory language is ambiguous, but that the legislative history clearly intended to restrict the sale of promissory notes to institutional investors *only* when the promissory note was secured by real property. Because Deaguero's loan was not secured by real property, the debt was not void, but remained collectible following sale to Mountain Lion. Since the debt was valid, there

was no violation of any debt collection law when Mountain Lion attempted to collect the debt, and Deaguero is not entitled to any damages. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Deaguero borrowed money from CashCall, Inc. (CashCall). The loan was not secured by real property. CashCall was licensed as a finance lender pursuant to the California Finance Lenders Law (§ 22000 et seq.), the law governing Deaguero's loan. CashCall sold Deaguero's debt to Mountain Lion for collection. Mountain Lion is not a licensed finance lender. Mountain Lion sued Deaguero for collection of the debt. Deaguero cross-complained, alleging violations of the California Finance Lenders Law, the RFDCPA (Civ. Code, § 1788 et seq.), and the federal FDCPA (15 U.S.C. § 1692 et seq.). He claimed not only that he did not have to repay the loan, but also that he was owed damages. His claims were based on his contention that the sale of his debt to Mountain Lion, which was neither a licensed finance lender, nor an institutional investor as defined in Financial Code section 22340, subdivision (b), violated subdivision (a) of that section and rendered the debt void pursuant to section 22750, subdivision (b). He further claimed that because Mountain Lion had attempted to collect a void debt, he was entitled to damages under the FDCPA and RFDCPA.

Mountain Lion brought a motion for judgment on the pleadings as to Deaguero's cross complaint, which the trial court denied. Mountain Lion dismissed the complaint against Deaguero, leaving only Deaguero's cross-complaint seeking damages. Following a court trial on the cross-complaint, the trial court rendered judgment in favor of Mountain Lion. The trial court opined that Deaguero's interpretation of section 22340 was "compelling," but found that Deaguero could not succeed on his complaint for damages without showing that Mountain Lion knew it was collecting on an unenforceable or void debt. Because there was no such proof, the court ruled in favor of Mountain Lion.

DISCUSSION

Deaguero's claims depend upon his construction of section 22340, subdivision (a). Specifically, his claim that Mountain Lion violated the FDCPA and RFDCPA is based on the claim that Mountain Lion attempted to collect a debt that it knew was void and uncollectable under section 22340, subdivision (a). Accordingly, if the debt was collectable and was not void, there was no violation of the FDCPA or RFDCPA for which Deaguero can claim damages.

Deaguero's argument on appeal focuses on his claim that the trial court erred in finding no violation of the FDCPA or RFDCPA because Mountain lion did not know that it was attempting to collect an uncollectable debt. He claims both the FDCPA and the RFDCPA are strict liability statutes. We need not address this claim because we hold the underlying debt was valid and collectable.

Subdivision (a) of section 22340 provides that a licensed finance lender "may sell promissory notes evidencing the obligation to repay loans made by the licensee pursuant to this division or evidencing the obligation to repay loans purchased from and made by another licensee pursuant to this division to institutional investors, and may make agreements with institutional investors for the collection of payments or the performance of services with respect to those notes." Subdivision (b) of section 22340 defines " 'institutional investors,' " and Mountain Lion does not fit any of the descriptions of an institutional investor.[2]

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[2] An institutional investor is defined by statute as:

> "(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing.

Deaguero's claims depend on section 22340 being construed to mean that a finance lender may sell promissory notes *only* to institutional investors, and that the sale in this case to a noninstitutional investor rendered the debt void and uncollectable pursuant to section 22750, subdivision (b). That section provides in pertinent part that if any licensed or unlicensed person willfully violates the California Finance Lenders Law in making or collecting a loan, the loan contract is void and may not be collected. This contention was rejected in *Montgomery v. GCFS, Inc*. (2015) 237 Cal.App.4th 724 (*Montgomery*). We agree with *Montgomery*, and rely on its analysis.

> "(2) A bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, finance lender, residential mortgage lender, or insurance company doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.
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> "(3) Trustees of pension, profit sharing, or welfare funds, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000), except pension, profit sharing, or welfare funds of a licensee or its affiliate, self-employed individual retirement plans, or individual retirement accounts.
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> "(4) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation; provided, however, that the purchaser represents that it is purchasing for its own account for investment and not with a view to or for sale in connection with any distribution of the promissory note.
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> "(5) A syndication or other combination of any of the foregoing that is organized to purchase the promissory note.
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> "(6) A trust or other business entity established by an institutional investor for the purpose of issuing or facilitating the issuance of undivided interests in, the right to receive payments from, or that are payable primarily from, a pool of financial assets held by the trust or business entity if all of the following apply . . . ." (§ 22340, subd. (b).)

"The first principle of statutory interpretation is that, to ascertain the Legislature's intent, we turn initially to the words of the statute, and if ' "the statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it." ' " (*People v. Johnson* (2006) 38 Cal.4th 717, 723.) Section 22340 states that a licensed finance lender "may" sell promissory notes to institutional investors. The word "may" is ordinarily construed as permissive rather than mandatory. (*Montgomery*, *supra*, 237 Cal.App.4th at p. 729.) The question here is whether the statutory language permits finance lenders to sell their notes *only* to institutional investors. (*Ibid*.) The language of the statute does not clearly answer this question. On the one hand, since the statute does not prohibit the sale of consumer loans to noninstitutional lenders, it could mean that such loans may be sold to anyone. On the other hand, applying the principle *expressio unius est exlusio alterius* (the inclusion of one thing in a statute implies the exclusion of other things), it might mean that the inclusion of institutional investors implies the exclusion of all others. (*Id*. at pp. 729-730.)

Because the statutory language is ambiguous, we may look to indicia of the Legislature's intent, including the legislative history of the statute. (*Montgomery*, *supra*, 237 Cal.App.4th at p. 730.) *Montgomery* analyzed the legislative history, and concluded that the Legislature's purpose in enacting section 22340, subdivision (a) was to permit licensed finance lenders to sell promissory notes secured by real property to institutional investors without having to be licensed as real estate brokers.[3] (*Id*. at pp. 730-731.)

The purpose of section 22340, subdivision (a) of the California Finance Lenders Law was to eliminate the need for licensed finance lenders to obtain a real estate broker's license in order to sell loans secured by real estate on the secondary market. (*Montgomery*, *supra*, 237 Cal.App.4th at p. 730.) Finance lenders are not required to

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[3] Section 22340, subdivision (a) was initially enacted as section 22476. (*Montgomery*, *supra*, 237 Cal.App.4th at p. 730.)

have a real estate license when acting within the scope of their license as a finance lender. (*Id*. at p. 731.) Prior to the enactment of section 22340, subdivision (a), the law regulating finance lenders was silent concerning the authority of finance lenders to sell and service promissory notes, but persons engaged in assigning notes to the public that were secured by real property were required to have a real estate license. (*Id*. at p. 730.)

The following statement of legislative intent was published in the Assembly Journal by unanimous consent: "Assembly Bill 346 authorizes finance companies . . . to sell real estate loans they have made to specified classes of institutional investors, and to make agreements to service those loans. [¶] In accordance with the finance companies' exemption from the real estate law, this authority eliminates the possibility that they could be required to be licensed and regulated as real estate brokers when selling or servicing real estate loans they have made." (2 Assem. J. (1985-1986 Reg. Sess.) p. 3298.)

"This legislative history makes clear that section 22340 [subdivision] (a) was intended to clarify Business and Professions Code section 10133.1, subdivision (a)(6): the sale of any debt, including debt secured by real estate, by a licensed finance lender to an institutional investor was within the authority of that lender's license. *That history also makes clear that the Legislature did not intend the provision to prohibit the sale of debt to non-institutional investors*. Instead, the Legislature left the statute silent as to other sales, leaving open the possibility that other statutory schemes could regulate those sales." (*Montgomery*, *supra*, 237 Cal.App.4th at p. 731, italics added.)

Because there is a clearly discernible legislative intent, we do not apply the principle of *expressio unius est exlusio alterius* where, as here, such application would lead to a contradictory result. (*Montgomery*, *supra*, 237 Cal.App.4th at p. 730.) Thus, CashCall, as a licensed finance lender, did not violate section 22340, subdivision (a), when it sold a non-real-estate-secured loan to Mountain Lion, and Mountain Lion did not violate the statute when it purchased the debt.

As there was no violation of section 22340, subdivision (a), Deaguero's claim that the debt was void and uncollectable is groundless. Because the debt was valid and collectable, Deaguero's claim that Mountain Lion owes damages for violation of the FDCPA and RFDCPA is also groundless.

DISPOSITION

The judgment is affirmed. Mountain Lion is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

/s/
Blease, Acting P. J.

We concur:

/s/
Mauro, J.

/s/
Renner, J.